

1086.0.0 DHS MEDIATION/GRIEVANCE POLICY (Gov's Proclamations EO 86-1, 7-16-85 & EO93-01, 7-1-93)

1086.0.1 This policy establishes procedures for resolving workplace disputes and disciplinary issues.

1086.0.2 Nothing in these rules and regulations shall abrogate the employment-at-will relationship between DHS and its employees. Any departmental error that does not prejudice the substantial rights of an affected party and in no way affects the final outcome of the case will be deemed harmless error and shall not be grounds for overturning the Department decision.

1086.1.0 Eligible Employees

Any full-time regular salaried employee who occupies a regular salaried position and works a minimum of 1,000 hours per year may file a grievance under this policy, except those listed in Section 1086.2.0, Non-eligible Employees. Employees who present a grievance or complaint in good faith and a reasonable manner shall be free from retaliation or reprisal.

1086.2.0 Non-eligible Employees

1086.2.1 DHS Director, Deputy Directors, Division/Office Directors, all unclassified positions (Grades 66 and 99), Managers and Program Directors (Grades 22-26), County Administrators, and employees who are appointed by the Constitutional Board (including Superintendents and Institutional Directors), are not eligible to file a grievance under this policy unless these exempt employees are applying for a classified position covered by the scope of this policy, to the extent that the grievance involves the application for the classified position.

1086.2.2 Part-time, temporary, emergency hire, extra help and employees serving in their initial (new-hire to the Department) probationary status are not eligible to file a grievance under this policy.

1086.3.0 Americans with Disabilities Act

Any employee regardless of his or her status may utilize this policy to address concerns related to the Americans with Disabilities Act of 1990. However, the State Employee Grievance Review Committee (SGRC) and the State Employee Grievance Appeal Panel (SEGAP) will not hear appeals from employees who are otherwise excluded from coverage.

1086.4.0 Filing a Mediation/Grievance

To seek a resolution to a workplace dispute or disciplinary issue the employee must submit the matter in writing to the grievance officer within five (5) working days of the date of the occurrence of the grievable action. The concern must be filed on a DHS-2801, Mediation/Grievance form. The form must be filled in completely and must describe the reasons the employee disagrees with the action taken and what the employee is seeking as a resolution to the dispute. Employees may contact the grievance officers for technical assistance in completing the form.

1086.5.0 Policy Components

- 1086.5.1 DHS Mediation is an internal non-adversarial negotiation between the employee presenting a grievance and his or her supervisor, using a neutral third-party mediator. (This process is sponsored by DHS.)
- 1086.5.2 DFA Mediation is an external non-adversarial negotiation between the employee presenting a grievance and his or her supervisor, using a neutral third-party mediator. (The Department of Finance and Administration (DFA), Office of Personnel Management (OPM), sponsors this process.)
- 1086.5.3 Grievance Procedure is a more formal process that allows the employee to request that successively higher levels of management review his or her grievance if the employee is not satisfied with the results of the procedure.

1086.6.0 DHS MEDIATION

- 1086.6.1 In order to reduce the number of formal grievances filed, internal mediation will be utilized as a first step attempt to resolve complaints.
- 1086.6.2 Within five (5) working days after the DHS Employee Relations Office (ERO) receives a grievance, a grievance officer will contact the mediator, the employee and the appropriate level of management to schedule a mediation session to be held within 10 working days after the initial receipt of the grievance. The mediation session will be scheduled at a time and location convenient for all parties and will not be recorded.
- 1086.6.3 If the process is successful, the mediator will formalize the terms of the agreement in writing, and all parties will sign and date the agreement, which will be filed with the grievance officer within five (5) working days of the conclusion of the mediation session.
- 1086.6.4 If the mediation session is unsuccessful, the mediator will prepare a “non settlement form,” that must be signed and dated by all parties, and a copy given to each participant at the conclusion of the mediation session. At this point, the employee may file a DHS 2802 Grievance Response form, to continue the process for any unresolved grievable issue. The completed DHS 2802 must be filed with ERO within five (5) working days following the conclusion of the mediation session.
- 1086.6.5 The mediation process may be concluded at any point by the employee, the supervisor or the mediator if the mediation sessions are not productive.

1086.7.0 Mediation Only Issues

Matters other than disciplinary action that otherwise are not grievable, disputes involving employees serving an initial new-hire to the department probationary status, and supervisory directed mediation may be addressed through the mediation procedure only.

1086.8.0 DFA MEDIATION

- 1086.8.1 Employees who have unresolved grievable issues following DHS Mediation may choose to continue their grievance by utilizing either the DFA Mediation or the Grievance Procedure.
- 1086.8.2 If the employee chooses DFA mediation the grievance officer will provide an Agreement to Mediate form that must be signed by the employee and the supervisor/management designee. The grievance officer will submit the grievance statement and the signed Agreement to Mediate form to DFA/OPM. OPM will contact all parties to schedule the mediation.

1086.9.0 GRIEVANCE PROCEDURE

1086.9.1 Grievable Matters:

- A. A grievable matter is an adverse action against any employee or former employee (in case of termination). Adverse action means termination, suspension, promotion, reduction of annual leave, sick leave, compensatory time, or other disciplinary actions or unlawful discrimination.
- B. Annual or probationary performance evaluations may be the subject of a grievance under this policy only in cases arising from allegations of unlawful discrimination or in cases of disciplinary action, such as probation, suspension, or termination. In such cases, a mediation/grievance may only be filed within five (5) working days after an employee receives the division director's decision as a result of an appeal under DHS Policy 1093, Career Ladder Incentive Program (CLIP), Appendix 5, Personnel Performance Evaluation System.

NOTE: Non-selection for promotion, lateral transfer or a lower grade position (demotion) may be heard through the DHS Mediation process and may not be appealed to the State Grievance Review Committee or the State Employee Grievance Appeal Panel unless discrimination is the basis of the complaint.

1086.9.2 Non-Grievable Matters include, but are not limited to:

- A. Advice given by grievance officers or by the Office of Chief Counsel.
- B. Approved DHS/Board policies, procedures, or guidelines.
- C. Matters governed by law, regulation or executive orders that are outside the Department's control.
- D. Non-disciplinary Counseling Statements, Form DHS-1131, that are used to document a discussion between a supervisor and an employee. The statements can apply to employee job performance, conduct or both.
- E. Reduction-in-force (RIF), unless an employee alleges that the RIF plan was not followed or results in unlawful discrimination. (RIF appeals will be processed through a separate appeals procedure.)
- F. Work reassignments, including days off and shifts when there is not misclassification of

job duties and the grade remains the same, or work reassignment to different off days and shifts than agreed upon by the employee at the time of hire.

- G. Reassignment or suspension with pay pending investigation outcome.
- H. Complaints against co-workers.
- I. Complaints that request a remedy to have a supervisor or other employee disciplined.
- J. Compensation.
- K. Conditions beyond the control of Department management or mandated by law.

1086.9.3 Determination of Grievable Matters

- A. After the employee submits a grievance, the grievance officer will decide if the complaint is grievable and notify the grievant in writing if a grievable issue does not exist. The grievant may appeal this decision in writing to the SGRC by seeking an advisory ruling.
- B. The grievance officer will request a determination from the SGRC by filing a brief statement using the Request For Grievable Matter Determination form about the cause of the complaint with the Administrator of the Office of Personnel Management (OPM). The employee may file a written statement through the grievance officer for submission to the Committee at the time of the request for determination of grievability.
- C. The grievance officer will send a copy of the request to all parties.
- D. The Administrator of OPM will report the Committee's decision to the grievance officer and the employee. The determination should be limited to whether or not the matter is grievable. The Committee will not make any findings at this stage about the merits of the complaint.
- E. When a matter is determined to be grievable, either by the grievance officer or by the SGRC, the grievance officer will notify all parties within one (1) day of receipt of the determination.

1086.10.0 Fact-Finding Conference

1086.10.1 The grievance officer will contact the director of the grievant's division to schedule a fact-finding conference within 20 working days. The division director/designee will conduct the conference. All charged parties and witnesses are required to attend. If the division director personally participated in the actions grieved or otherwise has a conflict of interest, the DHS Director will select an impartial individual with appropriate knowledge of divisional policies and concerns to conduct the fact-finding conference. The deciding official will issue a written decision to ERO on the DHS-2803, Grievance Decision form, within five (5) working days.

1086.10.2 Conduct of the Fact-Finding Conference:

- A. The deciding official will conduct the conference in an informal manner. The deciding official will receive exhibits and take testimony, ruling on the admissibility of both.
- B. The rules of evidence or civil or criminal procedure will not apply.

- C. The deciding official will determine where the conference will be held and will preside at the conference. The grievance officer will notify all people involved of the date, time, and location.
- D. All conferences will be tape recorded and available for transcription. The grievance officer must insure that this requirement is met.

1086.11.0 Grievance Representation

The grievant may have a fully participating representative at each formal processing step. The Department and the grievant must inform the grievance officer of a representative a minimum of three (3) working days before the scheduled conference. The name, title, and address of the representative must be given. The grievance officer will notify the opposing side. Failure to provide adequate notice may cause the conference to be rescheduled unless the agency agrees to go forward without a representative. Any cost in obtaining representation will be entirely the responsibility of the person hiring the representative.

1086.12.0 Grievance Witnesses

- 1086.12.1 The grievant and the Department will provide the grievance officer with a list of potential witnesses at each step. The list will include a brief statement of why each witness is being asked to attend. Notice of time, date and location of the grievance conference will be given to all DHS employees who are called as witnesses. The calling party will notify non-DHS employees.
- 1086.12.2 The deciding official will determine the relevance of all information to be heard at all internal proceedings. The deciding official will have the discretion to exclude testimony or evidence if such testimony or evidence is not relevant, privileged, or cumulative.
- 1086.12.3 All witnesses will be called for questioning by the deciding official. If requested by either party or their representatives, witnesses will be required to wait outside the conference room until they are needed. Either side or the deciding official in the initial hearing may question witnesses.
- 1086.12.4 Grievance officers or DHS attorneys may not be called as witnesses unless they are charged parties or have direct unprivileged knowledge of the acts or omissions which gave rise to the grievance. The DHS Director may compel them to testify to the extent this rule will not be violated.

1086.13.0 Statements

- 1086.13.1 Either side may make opening statements of no more than 10 minutes. Each side should outline the facts to be presented and indicate what the facts may prove.
- 1086.13.2 After opening statements, each side will present its case. In all cases involving disciplinary action, the Department will be heard first, followed by the grievant's preparation. However, in cases not involving disciplinary action, or in cases where unlawful discrimination is alleged, the grievant will proceed first, followed by the Department's presentation.
- 1086.13.3 Upon completion of both sides' presentations, closing statements will be allowed. They must

be limited to five minutes for each side.

1086.14.0 Notification of Decision

A copy of the grievance decision will be sent to the parties and their representatives within 10 working days of the conclusion of the fact-finding conference. The copy supplied to the grievant will have the DHS-2802, Grievance Response form, attached. The grievance officer may take any of the following steps to preserve evidence that the grievant was notified of the decision: (1) mailing the decision by certified mail, return receipt requested; (2) obtaining the employee's signature on the DHS-2803 form; or (3) obtaining a receipt from the employee.

1086.15.0 Appeal of Decision

- 1086.15.1 The grievant may appeal unfavorable decisions by filing the DHS-2802 form within five (5) working days of the receipt of the decision. The grievance officer will notify the DHS Director's office of the appeal and will provide the DHS Director's office a complete copy of the record of the case including a transcript of all testimony below. The DHS Director/designee will then decide the matter based on the record. The DHS Director/designee will issue a written decision within 15 working days of receipt of the record.
- 1086.15.2 If the grievant is not satisfied with the decision of the DHS Director/designee, the grievant may appeal the decision to the SEGAP or the SGRC, as appropriate. The appeal must be filed with the grievance officer within five (5) working days of receipt of the decision. The appeal must be filed using DHS-2802 form. The grievance officer will notify SGRC or SEGAP of the appeal within one (1) working day. The grievance officer will coordinate the selection of a hearing date with the Panel or Committee.
- 1086.15.3 SGRC or SEGAP will conduct further proceedings in accordance with the rules of those bodies. Copies of the Panel and Committee rules may be obtained from the grievance officer.

1086.16.0 SGRC Procedure

If the review body is the SGRC, the DHS Director will review the Committee's recommendations and, within ten (10) days of receipt of the written SGRC recommendation, will submit his decision in writing to all parties, representatives, and supervisors involved. The decision of the Director will be final and binding on all parties regarding the matter and the procedure. The SGRC will receive a copy of the decision.

1086.17.0 SEGAP Procedure

- 1086.17.1 If the review body is the SEGAP, the DHS Director will review the Panel's decision and implement the decision. If the DHS Director does not agree with the Panel's decision, the Director may, within 10 working days of receipt of the Panel's written decision, provide the Chief Fiscal Officer of the State and the aggrieved employee with written justification of the Department's action and request a formal review of the Panel's decision by the Chief Fiscal Officer. The employee may also submit comments regarding the DHS Director's justification to the Chief Fiscal Officer. Such response to the Department's appeal will be submitted to the Chief Fiscal Officer within 10 calendar days of the date of the Department's appeal. (Appeals

to the Chief Fiscal Officer should be processed by the grievance officer or authorized representative). The Chief Fiscal Officer will issue a final administrative order within 15 working days of receipt of the DHS Director's justification and written request for review, affirming, reversing, or modifying the SEGAP's decision, and the final administrative order shall be binding on the Department.

- 1086.17.2 Employees are not prohibited from availing themselves of remedies outside these procedures. Each employee retains the right to file a complaint with the Equal Employment Opportunity Commission or to pursue other legal remedies.

1086.18.0 Intervention

The DHS Director or division director may intervene during the pendency of a grievance within DHS or within 20 days of the conclusion of the mediation process. Intervention may include conducting special investigations, suspending time frame requirements, and making a decision. The DHS Director will make every effort to resolve all matters involving allegations of unlawful discrimination, termination, suspension without pay, involuntary demotion, or failure to award compensation.

1086.19.0 Confidentiality

All persons involved in the grievance process shall be subject to the confidentiality requirements for both programmatic documents as well as personnel files. Information concerning a grievance shall be open for inspection when such is provided in the Arkansas Freedom of Information Act. Violations of confidentiality requirements are subject to discipline under DHS Policy 1085 – Minimum Conduct Standards for DHS Employees and DHS Policy 1053 - Freedom of Information Act/Charges for Copying Documents. SGRC and SEGAP are not bound by this policy as it relates to the confidentiality of records.

1086.20.0 Records

- 1086.20.1 The grievant, the charged party, and the SGRC or SEGAP may view or have a copy of the grievance file. One copy of a written transcript will be made available to authorized persons. Tape duplication will be made available without cost to blind or visually impaired persons.
- 1086.20.2 The division director/designee will make all final determinations on the release or the viewing of documents related to pending grievances on a case-by-case determination and based upon the Arkansas Freedom of Information Act.
- 1086.20.3 The grievance officer will retain all records related to grievances.
- 1086.20.4 Records will be kept as required by DHS 1083, Document & Record Disposition Policy.
- 1086.20.5 Documents sent to the grievance office after a case file has been submitted to the Panel or Committee will be returned to the sender. The sender may attempt to have the additional documents entered into the record at the Committee or Panel conference or hearing. The Committee or Panel Chair will decide the relevancy of the material and may accept the additional information after the opposing side has the opportunity to review the material and make any objections. The sender should bring seven (7) copies of any documentation to be

introduced to the SGRC hearing or five (5) copies to the SEGAP hearing.

1086.21.0 Employee's Role

1086.21.1 Employees will:

- A. Be given time during work hours to meet with a grievance officer or mediator when the grievance officer or mediator schedules the meeting. Excused time off should be given to start the process or to participate in scheduled meetings or conferences. Any other time off relating to the grievance will be subject to approved annual leave.
- B. Be paid for travel expenses, including parking fees, when they attend scheduled fact-finding conferences or meetings with decision makers.
- C. Have access to relevant records and documents, subject to the confidentiality requirements as set out by state or federal law.
- D. Not use DHS resources for filing grievances, to respond to a grievance decision or to prepare requests for or respond to a request for documents, unless the forms or documents are those required by this policy. The use of other DHS resources for these purposes is a violation of DHS Policy 1085 – Minimum Conduct Standards for DHS Employees.

1086.21.2 Employees may:

- A. Seek technical assistance from the grievance officer by phone.
- B. Have witnesses present and question them at scheduled conferences.
- C. Choose a representative.
- D. Request interpreters, readers, or other types of assistance that may be reasonable and necessary.
- E. File the DHS-2801, Mediation/Grievance Statement, via fax, @ 501-682-6896, however if a fax machine is used the employee must call 501-682-6003 to assure that the form has been received within the time frame as stated in the instructions on the form.”

1086.22.0 Management's Role

The DHS Director/designee may:

- A. Gather all of the facts and attempt to resolve grievances in good faith.
- B. Assure that employees and former employees can use this procedure without interference, restraint, coercion, or reprisal.
- C. Communicate this policy and procedure to each employee.

- 1086.22.1 The DHS Director reserves the right to delegate any or all of these rights to designated officials subject to the provisions of policy and consistent with applicable state and federal laws or regulations.

1086.23.0 Grievance Officer's Role

The duties and responsibilities of grievance officers include:

- A. Providing technical assistance.
- B. Maintaining complete records of all grievances, complaints, and appeals.
- C. Determining grievability.

1086.24.0 Combining Grievances

When more than one grievance is filed about the same issue by two or more persons or if more than one grievance is filed by a single person, the deciding official or grievance officer may combine the grievances into one.

1086.25.0 Time Frames

- 1086.25.1 The employee must file the grievance within five (5) working days from the date the employee learned of the grievable action.
- 1086.25.2 The employee (grievant) presenting the grievance may conclude the Grievance Procedure at any time in the process.

1086.26.0 Corrective Action

- 1086.26.1 When a matter is decided in favor of the grievant, the deciding official or grievance officer must ensure corrective action is taken in a timely manner. If documentation is to be removed or replaced, all DHS files must reflect this action.
- 1086.26.2 The person responsible for taking action to resolve a grievance that is overturned will prepare a confidential memorandum to the Office of Finance and Administration (OFA), Personnel Section, requesting that the documentation be removed and, if appropriate, be replaced with specified actions. The division director must approve the memorandum before it is sent to OFA. The memorandum must include specific instructions to all offices that maintain copies of such documentation to remove the documentation and send the original copies to the grievance office, which will retain the documents
- 1086.26.3 Failure to ensure that all elements of the decision are implemented or initiated within 10 working days of receiving the decision may result in disciplinary action

1086.27.0 Originating Section/Department Contact

Office of Finance and Administration
Human Resources/Support Services Section
Policy and Administrative Program Management
P.O. Box 1437/Slot Number W403
Little Rock, AR 72203-1437
Telephone: 682-5835

Replacement Notation: This policy replaces DHS 1086 dated November 30, 2002 and Management Directive-1, Grievance Prevention and Resolution, dated March 1, 2002.